Probis Financial Services Pty Ltd (administrators appointed) v City Credit Investment Bank Ltd

HIGH COURT (KOTA KINABALU) — COMPANIES (WINDING UP) NO LBN-28NCC-1–10 OF 2023
LIM HOCK LENG J
14 AUGUST 2024

Companies and Corporations — Liquidator — Remuneration — Application for remuneration of interim liquidator — Whether remuneration sums claimed by interim liquidator were reasonable — Companies Act 2016 s 479(1) & (2) — Labuan Companies Act 1990 s 131(1)

The petitioner had filed a winding-up petition against the respondent, a Labuan company, due to the inability of the respondent to pay its debt to the petitioner. The petitioner then filed an ex parte application for the appointment of Luke Anthony Furler as the interim liquidator of the respondent. This application was challenged by Function Group Ltd and the respondent, but such challenges were dismissed by the court. In the present application ('encl 49'), the interim liquidator sought to be paid and reimbursed for the period 16 October 2023–15 January 2024 ('the said period'). The remuneration was for the sum of SGD987,187.50 for work done for the said period. There was also a claim for goods and service tax of SGD88,846.13, and for SGD35,603.75 in expenses covering the said period.

Held, granting order in terms of encl 49:

(1) The main statutory provision governing the issue here was housed in s 479(1) of the Companies Act 2016 ('the CA 2016'). Based on s 131(1) of the Labuan Companies Act 1990, s 479(1) of the CA 2016 was applicable to a Labuan company such as the respondent. It was incumbent on the interim liquidator to show that the sums claimed were reasonable, and there was material which the court must analyse with an independent mind (see paras 19–21).

(2) The interim liquidator had annexed details of the work entailed and work carried out which were set out in his affidavit vide encl 37. The annexure was dated 17 January 2024 and therefore a contemporaneous record. There was also a list of the team led by the interim liquidator, their rates and the time expended by each person. The same list disclosed the type of work carried out by each tier of the team, and the hours spent on that type of work. The list was annexed to the interim liquidator's affidavit affirmed on 22 February 2024 ('exh LAF-2'). The interim liquidator had explained that that he had performed his duties and

exercised his powers as interim liquidator as per the first report, which were subsequently elaborated upon in exh LAF-5. There was no evidence to show that the different categories of work carried out were unnecessary, or that the time spent on any of the work specified to have been carried out was misspent. There was also no indication or evidence from those opposing encl 49 that the charge out rates were outside the norm or excessive (see paras 23–24 & 35).

(3) The interim liquidator's remuneration was not required to be approved by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors, since the court may do so under s 479(2) of the CA 2016 (see para 36).

(4) It was for the interim liquidator to show need and reasonableness in incurring expenses or costs. That was done by reference to an overview of the first report, as well as exhs LAF-2 and LAF-5. While more details such as explanation for travel expenses or photocopies of, say, courier charges and invoices could only fortify the liquidator's claim, there could scarcely be any doubt, in the light of the first report as well as exhs LAF-2 and LAF-5, that many man hours had to be put into different kinds of work in a multi-jurisdictional perspective, and various expenses and costs would be incurred in the course of work (see para 38).

(5) In conclusion, in view of the multi-jurisdictional perspective of the work which was complicated by what appeared to be gaps and opaque transactions, the court found that the breakdown of the remuneration and different rates charged by the different team members depending on their seniority and position, tax payable, and expenses/costs were necessary and reasonable with no indication otherwise (see para 39).

[Bahasa Malaysia summary

Pempetisyen telah memfailkan petisyen penggulungan terhadap responden, sebuah syarikat Labuan, kerana ketidakupayaan responden untuk membayar hutangnya kepada pempetisyen. Pempetisyen kemudian memfailkan permohonan ex parte untuk pelantikan Luke Anthony Furler sebagai penyelesai interim responden. Permohonan ini telah dicabar oleh Function Group Ltd dan responden, tetapi cabaran sedemikian telah ditolak oleh mahkamah. Dalam permohonan semasa ('kandungan 49'), penyelesai interim tersebut memohon untuk dibayar dan dibayar balik untuk tempoh 16 Oktober 2023–15 Januari 2024 ('tempoh tersebut'). Saraan tersebut adalah sebanyak SGD987,187.50 untuk kerja yang dilakukan untuk tempoh tersebut. Terdapat juga tuntutan untuk cukai barangan dan perkhidmatan sebanyak SGD88,846.13, dan tuntutan perbelanjaan berjumlah SGD35,603.75 bagi tempoh tersebut.

Diputuskan, memberikan perintah seperti dipohon dalam kandungan 49:

(1) Peruntukan berkanun utama yang mengawal isu di sini termaktub dalam s 479(1) Akta Syarikat 2016 ('AS 2016'). Berdasarkan s 131(1) Akta Syarikat Labuan 1990, s 479(1) AS 2016 adalah terpakai kepada syarikat Labuan seperti responden. Penyelesai interim adalah bertanggungjawab untuk menunjukkan bahawa jumlah yang dituntut adalah munasabah, dan terdapat material yang perlu dianalisis oleh mahkamah dengan fikiran yang bebas (lihat perenggan 19–21).

(2) Penyelesai interim telah melampirkan butiran kerja yang terlibat dan kerja yang dijalankan yang dinyatakan dalam afidavit melalui kandungan 37. Lampiran tersebut bertarikh 17 Januari 2024 dan oleh itu merupakan rekod sezaman. Terdapat juga senarai pasukan yang diketuai oleh penyelesai interim, kadar bayaran mereka dan masa yang digunakan oleh setiap orang. Senarai yang sama mendedahkan jenis kerja yang dijalankan oleh setiap peringkat pasukan dan jumlah masa yang digunakan untuk jenis kerja tersebut. Senarai tersebut dilampirkan di dalam afidavit penyelesai interim yang disahkan pada 22 Februari 2024 ('eksh LAF-2'). Penyelesai interim telah menjelaskan bahawa dia telah melaksanakan tugasnya dan menjalankan kuasanya sebagai penyelesai interim seperti dalam laporan pertama, yang kemudiannya dihuraikan dalam eksh LAF-5. Tiada keterangan untuk menunjukkan bahawa kategori kerja yang berbeza yang dijalankan adalah tidak perlu, atau bahawa masa yang digunakan untuk mana-mana kerja yang dinyatakan telah dijalankan telah disalahgunakan. Juga tiada petunjuk atau keterangan daripada mereka yang menentang kandungan 49 bahawa kadar caj keluar yang dituntut adalah di luar norma atau berlebihan (lihat perenggan 23–24 & 35).

(3) Saraan penyelesai interim tidak perlu diluluskan oleh resolusi yang diluluskan pada mesyuarat pemiutang dengan majoriti tidak kurang daripada tiga perempat daripada nilai dan separuh daripada bilangan pemiutang, kerana mahkamah boleh berbuat demikian di bawah s 479(2) AS 2016 (lihat perenggan 36).

(4) Penyelesai interim bertanggungjawab untuk menunjukkan keperluan dan kewajaran dalam menanggung perbelanjaan atau kos. Itu dilakukan dengan merujuk kepada gambaran keseluruhan laporan pertama, serta eksh LAF-2 dan LAF-5. Walaupun butiran lanjut seperti penjelasan untuk perbelanjaan perjalanan atau salinan foto, katakan, bagi caj kurier dan invois hanya akan menguatkan tuntutan penyelesai, hampir tiada keraguan, berdasarkan laporan pertama serta eksh LAF-2 dan LAF-5, bahawa banyak jam kerja terpaksa digunakan untuk pelbagai jenis kerja dalam perspektif pelbagai bidang kuasa, dan pelbagai perbelanjaan serta kos akan ditanggung dalam perjalanan kerja (lihat perenggan 38).

(5) Kesimpulannya, mengambil kira perspektif pelbagai bidang kuasa bagi kerja yang rumit oleh apa yang kelihatan seperti jurang dan transaksi

yang tidak telus, mahkamah mendapati pecahan saraan dan kadar berbeza yang dikenakan oleh ahli pasukan yang berbeza bergantung pada kekananan dan kedudukan mereka, cukai yang perlu dibayar, dan perbelanjaan/kos adalah perlu dan munasabah tanpa apa-apa petunjuk sebaliknya (lihat perenggan 39).]

Cases referred to

Biocoslab Manufacturing Sdn Bhd v Golden Affinity Development Sdn & Ors [2024] MLJU 2025; [2024] CLJU 774, HC (refd)

Ong Kwong Yew & Ors v Ong Ching Chee & Ors and other appeals [2018] MLJU 2189; [2018] CLJU 2247, CA (refd)

Perumahan NCK Sdn Bhd v Mega Sakti Sdn Bhd [2005] 7 MLJ 389; [2005] CLJU 162; [2005] 1 LNS 162, HC (refd)

Legislation referred to

Companies Act 2016 ss 465(1), 466(1)(a), (1)(c), 479(1), (2)
Labuan Companies Act 1990 s 131(1)

Wong Chee Chien (Lim Chee Wee Partnership) for the petitioner.
Emily Wong (Wong & Co) for the respondent.
Ng Sai Yeang (with Teoh Chye Yi) (Raja, Daryl & Loh) for the appointed interim liquidator.
Danial Hazizan (S Ravenesan) for the for the supporting creditor (Function Group).
Marcus Lee (Marcus Lee) for the supporting creditor (Mayfair & Ayers Financial Group Ltd).
Alan Wong (with Mohd Shahir and Alya Tadwini) (Zain Megat & Murad) for the supporting creditor (Taiwanese creditors).
Vincent Lim (mention on behalf Yap Siew Yee & Co and Hanif Idris & Assoc) for the opposing creditor (CCIB Asset Management Ltd and City Credit Holding Ltd).
How Li Nee (How & Partners) for the liquidator of CCCL.

Lim Hock Leng J:

ENCLOSURE 49: NATURE OF DISPUTE

[1] On 18 June 2024, the court allowed the claim for remuneration by Luke Anthony Furler, the interim liquidator of the respondent, to be paid out of the assets of the respondent in terms of encl 49.

[2] The remuneration is for the sum of SGD987,187.50 for work done from 16 October 2023–15 January 2024.

[3] There was also a claim for goods and service tax of SGD88,846.88.13,

and for SGD35,603.75 in expenses covering the same period.

[4] For convenience, the total sum of SGD1,111,638.13 was referred to as the interim liquidator's remuneration.

[5] An appeal has since been filed by Function Group Ltd, one of the creditors of the respondent which opposed encl 49.

[6] Before providing the reasons for allowing encl 49, it may be necessary to narrate the salient facts leading up to the appointment and remuneration claim of the interim liquidator, so as appreciate the scope and nature of his work.

BACKGROUND FACTS

[7] The petitioner, a company incorporated in Australia, carried on business as a financial and insurance service provider. It is in voluntary administration and there are four joint administrators.

[8] The respondent, a company incorporated in Labuan, is a licensed offshore investment bank registered with the Labuan Financial Services Authority. It wholly owns City Credit Capital (Labuan) Ltd ('CCCL'), a licensed foreign exchange and money broker which was placed under liquidation by way of a creditors' voluntary winding up by which one Datuk Tee Guan Pian was appointed its liquidator.

[9] There was a commercial arrangement between the petitioner and the respondent whereby the petitioner was said to be owed monies in USD and Euros.

[10] On 28 April 2023, the petitioner, in need of funds on account of its own clients' withdrawal requests, unsuccessfully requested the respondent to withdraw the whole of its balances. Letters of demand and emails sent in successive months were to no avail.

[11] The respondent's premises in Kuala Lumpur were found to have been vacated. The email address of the principal officer Charles Chan was deactivated.

[12] On 2 October 2023, the petitioner filed its winding up petition against the respondent in the High Court of Sabah and Sarawak, Federal Territory of Labuan, on the basis that the respondent is unable to pay its debts within the meaning of ss 465(1), 466(1)(a) and 466(1)(c) of the Companies Act 2016.

[13] In elaboration, the petitioner averred that more than 21 days had lapsed since its letters of demand dated 22 June 2023 and 31 July 2023, and the respondent had failed to pay the sums of USD20,635,399.78 and Euros 11,750,264.62 (as at 28 April 2023) or any part thereof or to secure or compound for it to the satisfaction of the petitioner.

[14] The petitioner also averred that considering all the respondent's liabilities — current, contingent and prospective — the respondent is unable to pay its debts, especially since it was announced on 25 August 2023 that the regulatory authority Labuan Financial Services Authority had imposed business restrictions on the respondent for non-compliance with minimum capital and other regulatory requirements.

[15] Shortly thereafter, the petitioner made an ex-parte application for the appointment of Luke Anthony Furler as the interim liquidator of the respondent. On 16 October 2023, the application was granted by Justice Faridz Gohim.

[16] Function Group Ltd through Messrs Ravenesan applied to set aside the appointment by encl 27. It was in favour of the winding up but wanted the said Datuk Tee as the liquidator. The respondent through Messrs Wong & Co similarly applied to set aside the appointment by encl 29.

[17] Both challenges over the appointment were dismissed by this court which subsequently granted the interim liquidator's application for accounting and other records of the respondent and CCCL to be handed over by CCCL's liquidator who opposed that discovery application housed in encl 50.

ENCLOSURE 49: THE CONTENTIONS

[18] As mentioned earlier, the interim liquidator sought to be paid and reimbursed for the period 16 October 2023–15 January 2024.

[19] The main statutory provision governing the issue here is housed in s 479(1) of the Companies Act 2016 which reads:

> An interim liquidator other than the Official Receiver shall be entitled to receive the salary or remuneration by way of percentage or otherwise as is determined by the Court.

[20] The statutory provision is applicable to a Labuan company such as the respondent. See Labuan Companies Act 1990, s 131(1).

[21] It is incumbent on the interim liquidator to show that the sums claimed

are reasonable, and there is material which the court must analyse with an independent mind. See the Court of Appeal decision in *Ong Kwong Yew & Ors v Ong Ching Chee & Ors and other appeals* [2018] MLJU 2189; [2018] CLJU 2247.

[22] In that case, the materials were not contemporaneous records. They were summaries and although the rates were specified, there were no details of the type of work undertaken. The identity of the various personnel was undisclosed.

[23] In this case, the interim liquidator has annexed details of the work entailed and work carried out which are set out in his affidavit vide encl 37. The annexure is entitled 'Report of the Interim Liquidator for the period 16 October 2023–15 January 2024'. It is dated 17 January 2024 and therefore a contemporaneous record.

[24] Unlike the factual matrix in *Ong Kwong Yew & Ors*, there is a list of the team led by the interim liquidator, their rates and the time expended by each person. The same list discloses the type of work carried out by each tier of the team, and the hours spent on that type of work. The interim liquidator, as one of the two managing directors involved, spent 35.36 hours in October 2023, 78.07 hours in November 2023, and 61.60 hours in December 2023, clocking a total of 174.53 hours billed at SGD1,100 per hour which made up a total of SGD191,983. The other managing director, Yaser Dajani, billed six hours of work at a charge out rate of SGD1,100 in December 2023. The total fees billed amounted to SGD7,200,00. Thus, the hours spent by both managing directors totalled 180.53. The hours expended by them are then particularised as administration and planning (14.20 hours), accounting, banking and treasury (2.20 hours), correspondence with creditors and contributories (5.70 hours), CCAM Cayman (5.50 hours), employees (1.30 hours), investigation (98.91 hours) and so on. The type of work and the hours spent on each area by the directors, senior managers, senior associates and others are also enumerated. The list is annexed to the interim liquidator's affidavit affirmed on 22 February 2024 as exh 'LAF-2.'

[25] The interim liquidator has also, subsequently, provided details of the type of work carried out and the time spent, vide encl 84.

[26] While encl 49 was opposed by creditors such as Function Group Ltd and CCCL, as well as City Credit Holdings Ltd ('CCHL') on the basis that the interim liquidator had failed to show the remuneration and other costs were reasonable because there was a paucity of documentation and itemisation of costs, it was not opposed by the petitioner and the respondent, or the Taiwanese investors represented by Messrs Zain Megat & Murad. The

petitioner — which is in administration under four joint administrators — in fact supports encl 49 vide a letter dated 27 May 2024.

[27] The first report (p 5) includes a chart setting out the shareholding in the respondent which starts with a British Virgin Island limited company, Malhub Ltd, where the sole shareholder is one Budiman Effendi. At the bottom are five subsidiaries of the respondent, including CCCL, and a Shanghai representative office. The client portal has been shut down and creditors' accounts cannot be viewed. There were circumstances warranting further investigations, including property development in Canada which was supposed to lead to capital appreciation but the funds allegedly went elsewhere including to the respondent's whollyowned subsidiary CCCL which is said to be indebted to the respondent in excess of USD886m. The interim liquidator's work also includes an estimated statement of affairs as at 31 December 2023, and estimated realisable value as at 15 January 2024. The funds due to investors were said to be in excess of USD 1 billion. As at the time of the report, it appears a large number of Taiwanese investors fell victim to what was described as Taiwan's largest scam, and the respondent seems to be linked to the Easthill Financial Group. There is also a chart at p 18 of the report setting out the relationship between Function Group Ltd and the respondent, with preliminary investigations questioning Function Group Ltd's claims.

[28] Among the summaries of the interim liquidator and his team (p 19) are that: (a) the respondent and key individuals are ultimately linked to the Easthill Financial Group and/or 'external management,'; and (b) there has been deliberate, unauthorised use of clients' funds, through 'a complex web of companies incorporated around the globe'. There is little evidence that the respondent had made any genuine or recoverable investments (p 26).

[29] The work performed to date includes taking over possession of the office premises and its books/records, and securing the assets of the respondent, engagement with creditors and investigations. The plan going forward and the steps are also set out in the interim liquidator's report.

[30] Next, in encl 84, the interim liquidator sets out in more detail the nature of the work carried out and the number of hours spent. The personnel and their type of work and the hours expended are set out. In brief, Mary Spillane (a forensic accountant and asset tracing specialist) spent 49.4 hours in assisting the interim liquidator to peruse the respondent's bank statements comprising more than 3,000 pages spanning ten years and to analyse payments made, while one Jana El Alli spent 154 hours in, inter alia, interviewing managers of the respondent's fund department, analysing operations, reviewing documents, tracing and identifying the flow of funds, and checking the recipients of funds. The interim liquidator appointed accountants and

lawyers in the course of the interim liquidation.

[31] A breakdown of the work entailed is listed in exh 'LAF-45' in encl 84. Administration and planning took up 74.90 hours (including notification of the interim liquidator's appointment to, among others, the directors, corporate secretary, employees, banks, debtors, creditors, and others), statutory lodgement, correspondence with, inter alia, the subsidiary's liquidator, review of about 80 pre-existing agreements and internal work plan, appointment of legal counsel, as well as data collection from more than 50 laptops and servers. Accounting, banking, and treasury work took up 80.90 hours, for the takeover of accounts with local, Japanese and Chinese banks. There were numerous meetings, calls, and emails in that connection and also with the Labuan Financial Services Authority regarding restrictions it had placed on the respondent. There was also verification work on the respondent's expenses and reviews. Compiling the books and records in over 400 boxes, engaging CCCL's liquidator for handover of books and records which was resisted, and the preservation/transfer of over ten terabytes of electronic data took up 99.20 hours while correspondence with creditors and contributories took up 39.40 hours, including responding to over 5,000 creditors and liaising with Jones Day, a legal firm representing a number of Taiwanese investors.

[32] The interim liquidator also explained that 29.70 hours were spent on work related to City Credit Asset Management Co Ltd. Internal meetings took up 97.70 hours, reporting (including interviews of the respondent's management, the preparation of the estimated statement of affairs and the first report) entailed 177.90 hours, while work on legal related matters took up 139.02 hours. Meetings with statutory bodies such as the Labuan Financial Services Authority, LHDN, the Insolvency Department, and KWSP took 33.22 hours.

[33] The interim liquidator itemised the asset recovery work which entailed 113 hours, including meetings and correspondence with legal advisors relating to some USD850m sent to Indonesia, and with insolvency practitioners abroad as set out hereinbelow.

No	Name of Company	Insolvency Practitioner(s)' Company	Jurisdiction
1	Longchamp Absolute Return Unit Trust Fund	FFP (Advisors) Limited	Cayman Island
2	Probis Financial Services Pty Ltd	Hall Chadwick	Australia

No	Name of Company	Insolvency Practitioner(s)' Company	Jurisdiction
3	City Credit Asset Management (Co) Ltd	Kroll Cayman Limited	Cayman Islands
4	Mars Cap Ltd	PricewaterhouseCoopers	New Zealand
5	Spectra SPC	Acclime Corporate Advisory (Hong Kong) Limited and R&H Restructuring (Cayman) Ltd	Cayman Islands

[34] Significantly, the interim liquidator attributed 627.69 hours of work to investigations. As limited illustrative examples, the interim liquidator elaborated that there were multiple interviews and review of documents to ascertain the ownership and directorship of the entities within the City Credit group structure. There was work in relation to the respondent's 15 open products, subscription forms, fact sheets and transfers of funds, opening of accounts, transfers to CCCL, outstanding payments, verification of figures and review of documents received from auditors, identification of irregularities, tracing of the flow of funds, identifying potential areas for recovery of funds, and so on. Among the work the interim liquidator set out was assistance rendered to investigation by LFSA whose representative held a watching brief at the hearing.

[35] The court is mindful that the burden of proof lies with the interim liquidator to show that the remuneration claimed is justifiable, and 'that the work upon which the claim was based was work undertaken in the course of administration' *Perumahan NCK Sdn Bhd v Mega Sakti Sdn Bhd* [2005] 7 MLJ 389; [2005] CLJU 162; [2005] 1 LNS 162. The interim liquidator has explained that that he has performed his duties and exercised his powers as interim liquidator as per the first report, which were subsequently elaborated upon in exh 'LAF-5.' There is no evidence to show that the different categories of work carried out are unnecessary, or that the time spent on any of the work specified to have been carried out was misspent. There is also no indication or evidence from those opposing encl 49 that the charge out rates are outside the norm or excessive. In *Biocoslab Manufacturing Sdn Bhd v Golden Affinity Development Sdn & Ors* [2024] MLJU 2025; [2024] CLJU 774, with reference to the liquidator's fees, the Shah Alam High Court held: 'If the fees are excessive or exorbitant, the plaintiff/applicant did not give the correct amounts to be charged/imposed'.

[36] Next, the interim liquidator's remuneration is not required to be approved by a resolution passed at a meeting of creditors by a majority of not

less than three-fourths in value and one-half in number of the creditors, since the court may do so under s 479(2) of the Companies Act 2016.

[37] As for expenses and costs, the interim liquidator has provided a breakdown of the flights with the transaction dates, the staff travelling, and the amount spent on each flight, all of which totalled RM21,598.62. The total transportation costs added up to SGD625.54 while hotel accommodation added up to SGD7,924.80, both items with the transaction dates provided. Courier charges and postage totalled SGD922.30. Then there are the miscellaneous expenses, also with transaction dates, which totalled SGD4,532.49. In this category are, among others, mobile and wifi charges, box cartons for packing, office accessories, CCTV for the office. To provide all the particulars as to what documents are required to be put into box cartons, what documents are required to be sent by courier and why wifi charges were incurred on 24 October and certain dates in November and December 2023 may not be making the best use of the time of the interim liquidator or his team.

[38] No doubt, it is for the interim liquidator to show need and reasonableness in incurring expenses or costs. That was done by reference to an overview of the first report, as well as exhs 'LAF-2' and 'LAF-5.' While more details such as explanation for travel expenses or photocopies of, say, courier charges and invoices can only fortify the liquidator's claim, there can scarcely be any doubt, in the light of the first report as well as exhs 'LAF-2' and 'LAF-5,' that many man hours had to be put into different kinds of work in a multi-jurisdictional perspective, and various expenses and costs would be incurred in the course of work.

CONCLUSION

[39] In view of the multi-jurisdictional perspective of the work which is complicated by what appear to be gaps and opaque transactions, the court finds that the breakdown of the remuneration and different rates charged by the different team members depending on their seniority and position, tax payable, and expenses/costs are necessary and reasonable with no indication otherwise. In the premises, an order in terms of encl 49 was granted.

Order in terms of encl 49 was granted.

Reported by Dzulqarnain Ab Fatar